Supreme Court, U.S.
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No._____

IN THE

Supreme Court of the United States

SHERMAN RATTNER; NANCY NOLETTE; FRANK L. FISHER; LINDA ROBERTSHAW; DON L. SHETTEL, JR.; DOLORES GABAY,

Petitioners,

v.

CITY OF BOULDER CITY, NEVADA; CLARK COUNTY, NEVADA,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Nevada

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Supreme Court of Nevada has held that citizens may not vote on initiatives and referenda concerning matters deemed administrative, and under that holding struck citizen initiatives from the November 7, 2006 general election ballot. This raises two important federal constitutional questions that warrant review by this Court:

1. Whether the holdings of the Supreme Court of Nevada adopting an administrative exception to strike ballot initiatives and referenda impermissibly limit core political speech, are void for vagueness, and are overbroad in violation of the First Amendment of the United States Constitution?

2. Whether the holdings of the Supreme Court of Nevada adopting an administrative exception to strike ballot initiatives and referenda violate the sovereign rights and powers of the people under the First, Ninth, and Tenth Amendments of the United States Constitution?

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PETITION FOR A WRIT OF CERTIORARI

Petitioners are citizens of the State of Nevada and the City of Boulder City. Petitioners, sponsors of four initiatives concerning matters important to the voters and citizens of Boulder City, respectfully pray that this Court issue a writ of certiorari to review the holding of the Supreme Court of Nevada in this case. In plain contravention of the requirements of the Constitution of the United States, the state supreme court has exercised its judicial power in a manner that violates the rights and powers of its citizens. Because core political speech and the power of the people to exercise control over their government are protected by the Constitution of the United States, the court's decision involves issues of the utmost federal importance.

OPINIONS BELOW

On September 8, 2006, the Supreme Court of Nevada entered an Order of Affirmance in this case, a copy of which appears in the Appendix to this Petition, *pp App. 1.*

This order affirmed the Order Granting Declaratory, Injunctive, and Extraordinary Relief to enjoin the city clerk of Boulder City from placing the initiatives on the general election ballot, entered from the Nevada 8th Judicial District Court on July 20, 2006, a copy of which appears in the Appendix to this Petition, *pp App. 12.*

JURISDICTION

The judgment of the Supreme Court of Nevada affirming the district court order was entered on September 8, 2006. *Appendix, p. App. 1.* Because it involves important questions of federal constitutional law, the jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

Although the election has passed, this Court may consider this case if "'(1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party would be subjected to the same action again.'" *Murphy v. Hunt, 455 U.S. 478, 482, 102 S. Ct. 1181 (1982)(per curiam)*, quoting *Weinstein v. Bradford, 423 U.S. 147, 149, 96 S. Ct. 347 (1975) (per curiam)*. Ballot initiative actions are susceptible to short duration periods precluding full litigation. See, *e.g., Meyer v. Grant, 486 U.S. 414, 108 S. Ct. 1886 (1988)*. Should this Court hear this case in an expedited manner, these initiatives might be placed on the ballot for the upcoming municipal election scheduled for June, 2007. If a timely hearing and resolution by this Court for that purpose is not possible, the complaining party nevertheless will likely be subject to the same action, where Petitioners are presently drafting new initiatives concerning the same matters. Therefore this Court should not reject this petition for mootness.

Petitioners expressly raised the federal constitutional questions presented in this petition at all stages of the proceedings so far. "In the district court hearing . . . and Opposition Brief, Defendants appearing in Proper Person argued that the voters have the reserved power to do any action a city council may do, challenging the constitutionality of the administrative exception." *Appellants' Opening Brief, pp 19.*

The Petitioners maintained the constitutional challenge before the Supreme Court of Nevada as one of three major questions presented for review; "In determining the answer, the court must decide: . . . 3) and whether the administrative exception is authorized under the Nevada Constitution or permitted under the United States Constitution." *Id. at 3.* Petitioners expressly cited authority from this Court that rejects the administrative exception "as a matter of federal constitution law." *Id. at 25-26, citing City of Cuyahoga Falls v. Buckeye Community Hope Foundation, 538 U.S. 188, 123 S. Ct. 1389 (2003).* At oral arguments the Supreme Court of Nevada questioned counsel for both parties concerning the meaning and applicability of *Cuyahoga.* The Supreme Court of Nevada expressly addressed the federal constitutional challenge in its Order of Affirmance. *Appendix, pp App. 3-4, ftn 2.*

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First Amendment to the Constitution of the United States Free Speech clause and the Assembly and Petition clauses provide: "Congress shall make no law . . . abridging the freedom of speech, . . . or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Ninth Amendment to the Constitution of the United States provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The Tenth Amendment to the Constitution of the United States provides "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article 1 Section 2 of the Constitution of Nevada provides in part: "All political power is inherent in the people[.] Government is instituted for the protection, security and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it."

The Constitution of Nevada was amended to provide for voter initiatives and referenda in 1905 by Article 19. The relevant sections of Article 19, as amended, are:

> Article 19, Section 2.1. Notwithstanding the provisions of Section 1 of Article 4 of this Constitution, but subject to the limitations of Section 6 of this Article, the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this Constitution, and to enact or reject them at the polls.
>
> Article 19, Section 4. The initiative and referendum powers provided for in this article are further reserved to the registered voters of each county and each municipality as to all local, special and municipal legislation of every kind in or for such county or municipality. In counties and municipalities initiative petitions may be instituted by a number of registered voters equal to 15 percent or more of the voters who voted at the last preceding general county or municipal election. Referendum petitions may be instituted by 10 percent or more of such voters.

The charter of Boulder City, Nevada, Article XV, Section 140.1.A provides:

> All City-owned lands shall be sold or otherwise disposed of by ordinance, and any sales or disposition of parcels of more than one acre must be approved by the registered voters of the City at an election held in conjunction and in accordance with the election as required by Article XV, Section 143 of the Boulder City Charter.

STATEMENT OF THE CASE

The City of Boulder City sought to remove four initiative petitions from the general election ballot for November 2006. This case is an Appeal from the Order of Affirmance of the Supreme Court of Nevada, entered September 8, 2006, *Appendix, pp App. 1*, affirming the order of the Nevada 8th Judicial District Court granting Declaratory, Injunctive, and Extraordinary Relief in favor of Respondent City of Boulder City. In accordance with the order, the city clerk removed the four initiative petitions from the general election ballot of November 2006 and consequently they were not voted upon.

The facts of this case are not in dispute. The Petitioners, Defendants in the proceedings in District Court and Appellants in the Supreme Court of Nevada, are Sherman Rattner, Nancy Nolette, Frank L. Fisher, Linda Robertshaw, Don L. Shettel, Jr., and Dolores Gabay (hereinafter the Petitioners' Committee or Petitioners), and

all are residents and registered voters of Boulder City, Nevada.

Respondent Boulder City had acquired 107,412 acres of mostly vacant adjoining land known as the Eldorado Valley Transfer Area in 1995. The Petitioners' Committee filed several initiative petitions with respect to the Transfer Area. One initiative was for a charter amendment to sell the land in the Transfer Area, with the proceeds to be distributed to Boulder City and to the city's Residents of Record as of March 31, 2006. *Appendix, pp App. 19.* Another initiative was for a charter amendment to preserve the Transfer Area, by limiting its uses to public recreation, a desert tortoise preserve, and a solar energy peaking station. *Appendix, pp App. 18.* The city clerk certified these and two other petitions for essentially equivalent ordinances as having sufficient valid signatures for the November general election ballot.

Boulder City, joined by Clark County, filed motions in district court seeking to enjoin the city clerk from placing the initiatives on the ballot. The Petitioners' Committee in Proper Person filed an Opposition to Boulder City's motions. The Nevada 8th Judicial District Court held a hearing on the motions, where it ruled in favor of Boulder City, and entered an order for removal of the initiatives from the November ballot. The Petitioners' Committee, through counsel, appealed to the Supreme Court of Nevada, which held oral arguments. On September 8, 2006, the Supreme Court of Nevada entered an order affirming the district court ruling. *Appendix, pp App. 1*

The sole permissible grounds under Nevada authority presented by Boulder City in the Supreme Court of Nevada for pre-election removal of the initiatives was that they concerned administrative matters and therefore were not properly delegated subject matter for the voters' consideration. Petitioners argued in their briefs and at oral arguments that the initiatives were policy-forming and legislative, and thus were proper subject matter. Petitioners further argued that the administrative exception is not authorized under the Nevada Constitution. Finally, Petitioners argued that the administrative exception has been rejected by the Supreme Court of the United States on federal constitutional grounds. The Supreme Court of Nevada ruled against the Petitioners' Committee on all points. Petitioners hereby seek review in this Honorable Court on the federal constitutional grounds.

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED SO THAT THIS COURT MAY SETTLE AN IMPORTANT QUESTION OF FEDERAL CONSTITUTIONAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT, AND WHERE STATE SUPREME COURTS HAVE DECIDED THE QUESTION IN WAYS THAT CONFLICT WITH RELEVANT DECISIONS OF THIS COURT.

I. Review is Warranted Because The Supreme Court Of Nevada Has Disregarded Federal Constitutional Guarantees of Freedom of Speech

The First Amendment "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States, 354 U.S. 476, 484, 77 S. Ct. 1304 (1957).* The circulation of petitions for ballot initiatives and referenda are "core political speech" within "an area in which the importance of First Amendment protections is "at its zenith." " *Meyer v. Grant, 486 U.S. 414, 425, 108 S. Ct. 1886, 1894 (1988).* The protections of the First Amendment are enforceable against the states through Section 1 of the Fourteenth Amendment. Limitations on political expression are subject to exacting scrutiny. *Meyer v. Grant, 486 U.S. 414, 420, 108 S. Ct. 1886, 1891 (1988).*

Core political speech is advanced where ballot petitioners can "make the matter the focus of statewide discussion" not just by gathering petition signatures, but by getting the matter on the ballot before the voters. *Meyer v. Grant, 486 U.S. 414, 423, 108 S. Ct. 1886, 1892 (1988).* An initiative or referendum that comes before the electorate advances core political speech because it

> "ensures that all the people of a community will have a voice in a decision which may lead to large expenditures of local governmental funds for increased public services and to lower tax revenues. It gives them a voice in decisions that will affect the future development of their own community." *James v. Valtierra, 402 U.S. 137,143, 91 S. Ct. 1331, 1334 (1971).*

The language of the Nevada Constitution, Article 19, *supra pp 4-5*, does not expressly exclude administrative matters. Moreover, the word "administrative" appears nowhere in Article 19. The administrative exception exists as a judicially created rule adopted in Nevada in a line of cases starting in 1973.

In *Forman* a referendum and an initiative concerning zoning changes to a single commercial property were both invalidated after the election. *Forman v. Eagle Thrifty Drugs & Markets, 89 Nev. 533, 516 P.2d 1234 (1973).* In *Fuji Park* an initiative to preserve a large city park was invalidated prior to the election. *Glover v. Concerned Citizens for Fuji Park, 118 Nev. 488, 50 P.3d 546 (2002).*

In *Train Trench* an initiative to stop the construction of a $280 million lowered railroad through Reno was invalidated pre-election. *Citizens for a Public Train Trench Vote v. Reno, 118 Nev. 574, 53 P.3d 387 (2002).* In *Garvin*, a petition to limit the number of building permits countywide was invalidated under the administrative exception in a district court proceeding but reinstated in the Supreme Court of Nevada pre-election, *Garvin v. Ninth Judicial Dist. Ct., 118 Nev. 749, 59 P.3d 1180 (2002).* In *Garvin*, the Supreme Court of Nevada overruled parts of *Forman*, concluding that general zoning matters were now legislative and not administrative, and also overruling parts of *Fuji Park*, and *Train Trench*, the latter two cases decided just months prior to *Garvin.*

The Supreme Court of Nevada has admitted the administrative exception is vague: "This legislative-administrative dichotomy is often vague . . ." *Forman, 89 Nev. at 537.* In its application, the Supreme Court of Nevada continues to use indefinite terminology: ". . . an initiative creating a general land-use policy (establishing a commercial buffer zone around elementary and junior high schools) *seemed* legislative, but the land- specific referendum at issue in Forman (merely rezoning a single parcel owned by one entity) *seemed* administrative." *Appendix, pp App. 6-7* (*emphasis added*)

Other states also maintain a distinction between initiatives that are legislative in character and those that are administrative. See, *e.g.* dissent of Mr. Justice Stevens joined by Mr. Justice Brennan in *City of Eastlake v. Forest*

City Enterprises, Inc., 426 U.S.668 (1976), at 683. But the states categorize matters differently: "While courts draw similar distinctions, they are not entirely consistent about which category any particular type of measure fits within." *Train Trench, 118 Nev. 574, 583, 53 P.3d 387, 392.* Nevada has ruled sales of specific parcels of municipal land as administrative in the present case, while Texas has held that such sales are legislative as a matter of law. *Humphrey v. Balli, 61 S.W.3d 519, 2001 Tex. App. LEXIS 5133 (2001).* In *Balli*, the Texas appellate court applied the same test to distinguish between legislative and administrative, from *Denman*, that was first used by Nevada in *Forman* and affirmed in *Garvin*:

> "An ordinance originating or enacting a permanent law or laying down a rule of conduct or course of policy for the guidance of the citizens or their officers and agents is purely legislative in character and referable, but an ordinance which simply puts into execution previously-declared policies, or previously-enacted laws, is administrative or executive in character, and not referable." *Denman v. Quin, 116 S.W.2d 783, 786 (Tex. Civ. App. 1938).*

Application of the administrative exception rules adopted by state courts is further complicated by other considerations: "whether a particular municipal activity is "administrative" or is "legislation" often depends not on the nature of the action but the nature of the legal framework in which the action occurs." *Train Trench, 118 Nev. 574, 583, 53 P.3d 387, 392.*

Describing the three cases decided in Nevada in 2002, the Petitioners' Committee noted: "From the turmoil of Nevada cases in 2002, two of which were partly overruled before the end of the same year they were decided, it is clear the administrative exception is not established on a firm foundation." *Appellants Opening Brief, pp 12.*

The vagueness of the test for the administrative exception gives courts unfettered discretion to dispose of initiatives and referenda: ". . . but it is this very vagueness which has given the courts considerable leeway in balancing two competing interests: that of protecting government from unwarranted harassment and the equal interest in protecting benefits to be won through direct legislation." *Forman, 89 Nev. 533, 537,516 P.2d 1234, 1236.*

These vague rules that give courts and local officials considerable leeway serve as unfettered discretion to limit core political speech, and are impermissible under the First Amendment: ". . . an ordinance which . . . makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official . . . is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms." *Staub v. Baxley, 355 U.S. 313, 322, 78 S. Ct. 277, 288 (1967).* Also: "government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. And it may not select which issues are worth discussing or debating in public facilities." *Police Dep't of*

Chicago v. Mosley, 408 U.S. 92, 96, 92 S. Ct. 2286 (1972).

The administrative exception is a powerful tool that public officials can use to quash initiatives they oppose. Section 140.1.A of the charter of Boulder City, *supra at 6*, requires a voter referendum each time the city council votes to sell more than one acre of city owned land. Officials of the City of Boulder City have abused this unfettered discretion when, pursuant to the charter, they placed their own land sale measure on the ballot (later removing it) *Appellants Opening Brief, pp 14*, then used the judicially created administrative exception to remove the citizens' initiatives for land sales they opposed (*this case*), and then placed yet another specific land sale measure of their own origin on the November 7, 2006 general election ballot,[1] all within the same election cycle and calendar year.

To justify a restriction upon freedom of speech rights based on content, the state has the high burden of showing a compelling interest. The Supreme Court of Nevada has offered the vagueness of the administration exception as affording the benefit of "protecting government from unwarranted harassment", *Forman, 89 Nev. 533, 537,516*

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[1] BOULDER CITY QUESTION NO. 3 Shall the City sell between five (5) and five and one-half (5 1/2) acres in the Boulder City industrial area to be utilized for small business purposes, the proceeds of which will be deposited into the Capital Improvement Fund?

P.2d 1234, 1236. The purpose of avoiding unwarranted harassment is not best served by this means, "because the minimum number of petition signers, 10% of voters statewide *Nev. Const. art. 19, § 2*, or 15% for municipal elections *Nev. Const. art. 19, § 4*, provide the barrier sufficient to eliminate measures that are intended solely to harass government, but lack any real popular support." *Appellants' Opening Brief, pp 23.*

The Supreme Court of Nevada reaffirmed the protecting-government-from-harassment state interest in its Order striking the initiatives to "sell" the Transfer Area: "The significant time and resources implicated by implementing these administrative details illuminates the policy underlying the administrative act exception: to prevent the electorate from destroying or impeding the efficient administration of governmental affairs." *Appendix, pp App. 7.*

The administrative exception is an overbroad restriction on core political speech, not narrowly tailored to serve that policy or state interest. That is, the Supreme Court of Nevada also used the administrative exception to strike the "preserve" initiatives, which would impose no increased burden at all upon city administration. Further, many initiatives that "seem" legislative, and therefore permissible, also have the effect of increasing the burden upon the efficient administration of governmental affairs.

Voters understand that initiatives, their elections, and government itself are expensive and complicated matters, but have reserved to themselves the right and the power to make those choices directly. It is their fundamental right to speak collectively about how their government may best serve them.

II. Review is Warranted Because The Supreme Court of Nevada Disregarded Federal Constitutional Guarantees of Popular Sovereignty

"[I]t is the Right of the People to alter or to abolish [Government], and to institute new Government . . ." *Declaration of Independence, July 4, 1776.*

This declaration of popular sovereignty is echoed in the Preamble to the Constitution: "We the People . . . do ordain and establish this Constitution for the United States of America . . ." and was a recurring theme throughout its ratification debates, *e.g.*: " . . . It only supposes that the power of the people is superior to both [the legislature and the judiciary]. " *The Federalist Papers, No. 78 (Hamilton).* And: "Here, in strictness, the people have surrendered nothing; and as they retain everything, they have no need of particular reservations." *The Federalist Papers, No. 84 (Hamilton).*

The Bill of Rights are commonly thought of today as concerned only with countermajoritarian protections of the rights of individuals and minority groups. However, the original intent included the purpose of popular sovereignty

as well, of securing the rights of the majority against abuse by a self-interested Congress:

> "Our First Amendment's focus on Congress suggests that its primary target was attenuated representation, not overweening majoritarianism. Congress was singled out precisely because it was *less* likely to reflect majority will."[2] *(emphasis in original)*

Thus the First Amendment "right of the people peaceably to assemble, and to petition the Government for a redress of grievances" was intended to enable and protect the people in their exercise of their popular sovereignty, for example, in convention.

The Ninth Amendment has most commonly been invoked for the countermajoritarian protections it provides individuals. However, the original intent behind the Ninth Amendment includes a protection of the collective, majoritarian right of popular sovereignty: "Indeed the most obvious and inalienable right underlying the Ninth Amendment is the collective right of We the People to alter or abolish government, through the distinctly American device of the constitutional convention."[3]

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[2] Akhil Reed Amar; *The Bill of Rights: Creation and Reconstruction*. Yale University Press, New Haven, 1998, p 22.

[3] Id. at 120.

The Tenth Amendment has been invoked most commonly as a source of protection of the powers of the states from encroachment by the federal government. However, its original intent was also a declaration of popular sovereignty with respect to both the federal government and the states: "The popular sovereignty motif of the Tenth Amendment could not be more obvious. We the People, acting collectively, have delegated some powers to the federal government, have allowed others to be exercised by state governments, and have withheld some things from all governments."[4] Other sources support this as the original intent in the drafting the Tenth Amendment:

> "What little evidence we have from the First Congress tends to confirm that . . . a stated general reservation of power should reflect that it is the people who grant and reserve powers to both the federal and state governments, and therefore that the reserved powers are reserved first to the people and second to the states."[5]

While a very few of the provisions of the Bill of Rights have not been incorporated as applying to the states by

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[4] Id. at 119.

[5] Thomas B. McAffee, Jay S. Bybee, A. Christopher Bryant; *Powers Reserved for the People and the States: A History of the Ninth and Tenth Amendments*, Praeger Publishers, Westport, 2006, p 43.

means of Section 1 of the Fourteenth Amendment, those that concern popular sovereignty have been. The popular sovereignty provisions should apply even before incorporation, since for the People to retain sovereignty over the federal government but to be subservient to the states makes no sense. This Court has consistently recognized the primacy of popular sovereignty, from early in the nation's history:

> "From these Conventions the constitution derives its whole authority. The government proceeds directly from the people; is "ordained and established" in the name of the people; . . . The government of the Union, then, . . . is, emphatically, and truly, a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit." *McCulloch v. Maryland, 17 U.S. 316, 403-405, 4 Wheat 316 (1819).*

More recently, in *City of Cuyahoga Falls v. Buckeye Community Hope Foundation, 538 U.S. 188, 123 S. Ct. 1389 (2003)*, this Court unanimously rejected the administrative exception to voter referendums:

> "As a matter of federal constitutional law, we have rejected the distinction that respondents ask us to draw, and that the Ohio Supreme Court drew as a matter of state law, between legislative and administrative referendums. In *Eastlake v. Forest City Enterprises, Inc., 426 U.S., at 672, 675*, we made clear that because

> all power stems from the people, "[a] referendum cannot . . . be characterized as a delegation of power," unlawful unless accompanied by "discernible standards." The people retain the power to govern through referendum "'with respect to any matter, legislative or administrative, within the realm of local affairs.'" *Id., at 674, n. 9.* Cf. *James v. Valtierra, 402 U.S., at 137.* Though the "substantive result" of a referendum may be invalid if it is "arbitrary and capricious," *Eastlake v. Forest City Enterprises, supra, at 676*, respondents do not challenge the referendum itself. The subjection of the site-plan ordinance to the City's referendum process, regardless of whether that ordinance reflected an administrative or legislative decision, did not constitute *per se* arbitrary government conduct in violation of due process." *Cuyahoga Falls, 538 U.S., at 199, 123 S. Ct., at 1396.*

This passage was quoted as presented here in Petitioners' brief to the Supreme Court of Nevada. *Appellants Opening Brief, pp 25-26.* The federal constitutional law invoked in *Cuyahoga* is the protection of core political speech in the referendum process, and the assertion of popular sovereignty where "all power stems from the people".

Petitioners argued before the Supreme Court of Nevada that the scope of popular sovereignty was not limited by the plain language or the intent of the Nevada Constitution: "All political power is inherent in the people[.] Government is instituted for the protection, security and

benefit of the people; and they have the right to alter or reform the same whenever the public good may require it. *Nev. Const. art. 1, § 2." Appellants' Opening Brief, pp 24.* Petitioners further argued that the administrative exception to the right and power of the people to petition government was not authorized by the Nevada Constitution, where "The initiative and referendum powers provided for in this article are further reserved to the registered voters of each county and each municipality as to all local, special and municipal legislation of every kind in or for such county or municipality. *Nev. Const. art. 19, § 4." Appellants' Opening Brief, pp 21.*

The Supreme Court of Nevada rejected those arguments, and affirmed its holding in *Forman* that the Nevada Constitution does not permit delegation of powers to the people concerning initiatives and referenda that are administrative. In *Forman* the Supreme Court of Nevada characterizes administrative matters as an impermissible delegation of power to the people:

> "When in a matter of state-wide concern the state legislature has specifically delegated particular authority to a governing board, the courts have uniformly held that initiative processes do not ordinarily apply. 5 McQuillan, Municipal Corporations, Sec. 16.52. The State of Nevada has delegated comprehensive powers to cities and towns in the area of zoning regulation." *Forman, 89 Nev. 533, 538, 516 P.2d 1234, 1237.*

Nevada (and other states) characterize administrative matters as delegations by a legislature of power to its agencies and entities, where such a "delegation" to a popular vote is constitutionally impermissible. This view has been expressly disapproved by this Honorable Court in *Cuyahoga* and the line of cases cited therein.

The Supreme Court of Nevada distinguished the opinion in *Cuyahoga* rejecting the administrative exception, saying the opinion applies only to "federal constitutional law." *Appendix p App. 3, note 2.* This ignores the express language from *Cuyahoga* that rejects the administrative exception on federal constitutional grounds - not in the context of a national referendum - but rather in the context of local affairs: "The people retain the power to govern through referendum 'with respect to any matter, legislative or administrative, *within the realm of local affairs.*' " *Cuyahoga, 538 U.S. at 199 (emphasis added).*

The Supreme Court of Nevada went on to say "This decision, moreover, concurrently acknowledges that the distinction may exist as a matter of state law." *Appendix, pp App. 3-4, note 2.* Petitioners dispute this interpretation of *Cuyahoga* by the Supreme Court of Nevada, which holds that a state court interpretation of a state law inconsistent with the federal constitution is permissible, particularly where the state law interpretation violates the most fundamental rights guaranteed by the United States Constitution.

Clearly the decision of the Supreme Court of Nevada in the present case, and its earlier administrative exception decisions, which hold that state law may limit or remove rights and powers reserved by the people and protected by the federal constitution is in conflict with this Court's decision in *Cuyahoga* and other cases.

CONCLUSION

The core political speech of the voters has been silenced and their rights and powers of popular sovereignty have been crippled by the holding of the Supreme Court of Nevada in the present case.

> " . . . the assertion that the City of Boulder City might be harmed if its voters wish to choose a new course of action, and that such speculative and distant harm comprises grounds to deny its citizens the right to vote, is palpably offensive. It holds that the city as an entity unto itself has protectable interests adverse to its own citizens sufficient to silence their voice concerning how their government shall be run. It turns our theory of government on its head." *Appellants' Opening Brief, pp 28.*

Petitioners submit to this Honorable Court that this action by the Supreme Court of Nevada violates Petitioners' federal constitutional rights, and that Nevada and other state supreme courts have decided the question in ways that conflict with relevant decisions of this Court. Because these violations and conflicts may only be

resolved by the action of this Court, Petitioners pray that a writ be granted.

Respectfully submitted,

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December 7, 2006

APPENDIX

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Nevada Supreme Court
Rattner v. Boulder City
Order of Affirmance

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 47795
Filed September 8, 2006

SHERMAN RATTNER; NANCY NOLETTE; FRANK L. FISHER; LINDA ROBERTSHAW; DON L. SHETTEL, JR.; AND DOLORES GABAY,
Appellants, vs.
THE CITY OF BOULDER CITY AND COUNTY OF CLARK,
Respondents.

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a ballot initiative action. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

The underlying action concerns approximately 107,412 acres of land in the Eldorado Valley, in the southwest portion of Boulder City. In 1995, respondent City of Boulder City acquired the Eldorado Valley land from the Colorado River Commission of Nevada. Thereafter, Boulder City dedicated to respondent Clark County an easement on approximately 85,000 acres of the

land for an endangered species preserve.

To force Boulder City to either sell or preserve the Eldorado Valley land, appellants, six Boulder City residents comprising the Petitioner's Committee, filed with the Boulder City clerk six "Affidavit[s] of Petitioner's Committee for Purpose of Initiative," requesting to place the ensuing initiative petitions on Boulder City's general election ballot. Thereafter, the Petitioner's Committee collected signatures on four of these petitions.

Two petitions, the so-called sell initiatives, propose that Boulder City's charter be amended or that an ordinance be enacted to sell the Eldorado Valley land (i.e., one sell initiative proposes to amend Boulder City's charter, while the other proposes to enact an ordinance). The other two petitions, the so-called preserve initiatives, propose that Boulder City's charter be amended or that an ordinance be enacted to preserve the Eldorado Valley land in perpetuity.

The Petitioner's Committee collected the requisite number of signatures on all four initiative petitions, submitting them to the Boulder City clerk for validation. Before the clerk determined that sufficient signatures had been gathered, Boulder City instituted the underlying action seeking declaratory, injunctive, and extraordinary relief, to prevent the clerk from placing the initiative petitions on the ballot. The clerk subsequently validated the petitions. Thereafter, Boulder City filed a motion for "Declaratory Order, Injunction, and Writ of Mandamus or

Prohibition." The Petitioner's Committee opposed the motion and moved for summary judgment. Meanwhile, respondent Clark County, based on its easement on the Eldorado Valley land, moved to intervene.

The district court granted Boulder City's and Clark County's motions and denied summary judgment to the Petitioner's Committee. In particular, the district court's order declared the sell and preserve initiatives invalid, and granted Boulder City injunctive and extraordinary relief prohibiting the initiatives from being placed on the ballot. In this, the district court reasoned that the initiatives concerned administrative acts not within the electorate's initiative power. The Petitioner's Committee has appealed.

An initiative or referendum is subject to a pre-election challenge based on the threshold constitutional requirement that it propose only legislation.[1] Specifically, in Garvin v District Court, we reaffirmed that "the initiative and referendum powers reserved to the people, although broad, are limited to legislation and do not extend to administrative matters."[2] Garvin also reiterated the test

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[1] Garvin v. Dist. Ct., 118 Nev. 749, 766, 59 P.3d 1180, 1191 (2002).

[2] Id. at 751, 59 P.3d at 1181. The Petitioner's Committee maintains that limiting the electorate's initiative power to legislative acts violates the Nevada and United States Constitutions. With respect to the United States Constitution, the Petitioner's Committee cites the United States Supreme Court's decision in Cuyahoga Falls v. Buckeye Community Hope Foundation, 538 U.S. 188 (2003). This decision, however, simply provides that, "as a matter of federal constitutional law,"

adopted in Forman v. Eagle Thrifty Drugs & Markets for distinguishing between legislative and administrative measures:

> "An ordinance originating or enacting a permanent law or laying down a rule of conduct or course of policy for the guidance of the citizens or their officers and agents is purely legislative in character, and referable, but an ordinance which simply puts into execution previously-declared policies, or previously-enacted laws, is administrative or executive in character, and not referable."[3]

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the United States Supreme Court has rejected the distinction between legislative and administrative initiatives and referenda. Id. at 199. This decision, moreover, concurrently acknowledges that the distinction may exist as a matter of state law. Id.

With respect to the Nevada Constitution, article 19, section four pertinently states that "[t]he initiative and referendum powers . . . are... reserved to the registered voters of each county and each municipality as to all local, special and municipal legislation of every kind." The Nevada Constitution thus "[b]y its plain terms" limits the electorate's initiative power to legislative matters. See Garvin, 118 Nev. at 763, 59 P.3d at 1189. Accordingly, the Petitioner's Committee's arguments are unavailing.

[3] 89 Nev. 533, 537, 516 P.2d 1234, 1236 (1973), overruled on other grounds by Garvin, 118 Nev. 749, 755, 59 P.3d 1180, 1184 (quoting Denman v. Quin, 116 S.W.2d 783, 786 (Tex. App. 1938)).

Indeed, as this court has clarified, "regardless whether an initiative proposes enactment of a new statute or ordinance, or a new provision in a constitution or city charter, or an amendment to any of these types of laws, it must propose policy—it may not dictate administrative details."[4] This requirement prevents the electorate from destroying or impeding the efficient administration of governmental affairs.[5]

On appeal, the Petitioner's Committee argues that the sell and preserve initiatives propose legislative acts because, together, the initiatives present three "clear and profound" policy choices: 1) to prevent virtually all development in the Eldorado Valley land; 2) to vastly expand development in the Eldorado Valley land, beyond the "present nominal policy of limiting development;" and

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[4] Citizens for Train Trench Vote v. Reno, 118 Nev. 574, 583, 53 P.3d 387, 392 (2002)

[5] See Glover v. Concerned Citizens for Fuji Park, 118 Nev. 488, 495, 50 P.3d 546, 550 (2002); accord Hopping v. Council of City of Richmond, 150 P. 977, 979 (Cal 1915):

> To allow [the initiative power] to be invoked to annul or delay executive conduct would destroy the efficiency necessary to the successful administration of the business affairs of a city. In many cases it would entirely prevent the exercise of the executive power necessary to carry out the acts determined upon by the legislative department. In the absence of a very clear declaration to the contrary, it must be presumed that the power of [initiative] was intended to apply solely to the legislative powers of the city.

3) to "permit the [Boulder City] council to continue the present haphazard, ad hoc course they have been following."

As the Petitioner's Committee's initiatives concern only a single parcel, however, the initiatives are necessarily administrative. We have consistently held that an initiative dictating the use or non-use of specific municipal property fails to contain the policy elements necessary to bring the proposal within the electorate's initiative power.[6] In particular, in Garvin, we overruled Forman to the extent that it suggested city zoning processes were never subject to the electorate's initiative powers.[7] In so doing, however, we noted that an initiative creating a general land-use policy (establishing a commercial buffer zone around elementary and junior high schools) seemed legislative, but the land- specific referendum at issue in Forman (merely rezoning a single

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[6] See Garvin, 118 Nev. at 755, 59 P.3d at 1184 (recognizing that an initiative proposing a general zoning policy seemed legislative, while a land-specific zoning referendum seemed administrative); Fuji Park, 118 Nev. at 495, 50 P.3d at 550 (2002) (concluding that an initiative calling for the preservation of specific city-owned property, as opposed to setting forth a new course of policy regarding the manner in which the city made real property decisions, was administrative); Train Trench, 118 Nev. at 583-84, 53 P.3d at 393 (concluding that an initiative prohibiting the construction of a particular public works project, rather than establishing a course of policy regarding public works projects, was administrative).

[7] See Garvin, 118 Nev. at 765, 59 P.3d 1190.

parcel owned by one entity) seemed administrative.[8] Garvin likewise reaffirmed Glover v. Concerned Citizens for Fuji Park's[9] and Citizens for Train Trench Vote v. Reno's[10] conclusions that land-specific measures are administrative and thus excepted from the electorate's initiative power.[11] Consequently, we have expressly left intact the prohibition on administrative, land-specific acts.

The Petitioner's Committee's sell initiatives call for the transfer and sale of a specific parcel of municipal land, albeit a substantial one. Therefore, the initiatives do not set forth a new course of policy to guide citizens or their officers and agents regarding the way in which Boulder City makes land use decisions. Put differently, though the sell initiatives dictate Boulder City's approach as regards the Eldorado Valley land, they do not set a concrete course of policy to guide Boulder City's land use decisions generally.

And the sell initiatives dictate transitory, administrative details concerning the proposed land sale, specifically directing the following: that the city settle all claims concerning the land; that the city transfer the land,

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[8] Id. at 755, 59 P.3d at 1184.

[9] 118 Nev. 488, 50 P.3d 546.

[10] 118 Nev. 574, 53 P.3d 387.

[11] See Garvin, 118 Nev. at 765 nn. 71-72, 59 P.3d at 1190-91, nn 71-72.

for $1.00, to a trust; that a non-profit, tax-exempt trust be established to receive the land; that the Petitioner's Committee serve as trustees; that the city cooperate with the Petitioner's Committee to execute any documents and to make any zoning changes or any deannexations, as needed; that the land be sold for the highest value; that 90 percent of the resulting proceeds be distributed to certain Boulder City residents; and that 10 percent of the resulting proceeds be allocated to the trustees, Boulder City debt, education, and the community, among other things. The significant time and resources implicated by implementing these administrative details illuminates the policy underlying the administrative act exception: to prevent the electorate from destroying or impeding the efficient administration of governmental affairs.[12] Accordingly, because the sell initiatives concern specific municipal property, fail to define a concrete course of policy regarding Boulder City's land use decisions and, moreover, set forth the administrative details with respect to the sale of this specific municipal property, the sell initiatives propose measures not subject to the electorate's initiative powers.[13]

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[12] See Fuji Park, 118 Nev. at 495, 50 P.3d at 550.

[13] The Petitioner's Committee, citing the Texas Court of Appeals decision in Humphrey v. Balli, 61 S.W.3d 519 (Tex. App. 2001), argues that land sales are legislative acts. But Humphrey is factually distinguishable from the underlying matter and not binding authority on this court. As discussed, this court has consistently concluded that initiatives concerning a city's decisions with respect to particular municipal property do not constitute legislative measures. See Fuji Park, 118 Nev. at 495, 50 P.3d at 550; Train Trench, 118 Nev. 583-84, 53 P.3d

The preserve initiatives likewise propose measures not subject to the electorate's initiative power. Specifically, the preserve initiatives attempt to preserve the Eldorado Valley land in perpetuity, prohibiting Boulder City from acting to "sell, lease, or otherwise dispose" of the land and directing Boulder City to preserve the Eldorado Valley land exclusively for a desert tortoise preserve, public recreation land, and solar power peaking stations. These restrictions mirror a recital from the Eldorado Valley land sale contract entered into when Boulder City acquired the land from the Colorado River Commission.[14] But an initiative petition calling for the preservation of one specific municipal parcel does not meaningfully set forth a new course of policy to guide citizens or their officers and agents regarding the way in which a municipality makes decisions about its real property.[15] in light of this

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at 393.

[14] This recital notwithstanding, under section 144(1) of Boulder City's charter, the Eldorado Valley Land currently may also be used for "utility lines, easements, roads, rights-of-way, communication towers, antennas and similar governmental uses and for existing lease and lease options." Under section 144(2), moreover, the Eldorado Valley land, with voter approval, may be used for any "residential, commercial or industrial development. .. [or any use] other than the uses listed in section 1."

[15] See Fuji Park. 118 Nev. at 495, 50 P3d at 550. We note that, with respect to the conservation easement—nearly four-fifths of the Eldorado Valley land—the preserve initiatives propose nothing new. The conservation easement grant already limits use of the land burdened by the easement in the same way that the preserve initiatives propose. And as discussed, an initiative must change policy, proposing a new course to

rule set forth in Fuji Park and reaffirmed in Garvin, the preserve initiatives fail to implement a new permanent course of policy to guide Boulder City officials' future land use decisions.[16] Thus, the Petitioner's Committee's preserve initiatives also concern matters not within the electorate's initiative power.[17]

Accordingly, because we conclude, as a threshold matter, that neither the sell nor preserve initiatives propose

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guide municipal decision-making. Initiatives must not simply reaffirm existing policy.

[16] See Garvin, 118 Nev. at 765 n.71, 59 P.3d at 1190 n.71; Fuji Park, 118 Nev. at 495, 50 P.3d at 550.

[17] The Petitioner's Committee asserts that, if an initiative concerns legislative and administrative acts, as the Petitioner's Committee contends the sell and preserve initiatives, at the very least, do, the legislative aspect should prevail and, in and of itself, warrants placement of the initiative on the ballot. The Petitioner's Committee cites Garvin in support of this argument: "the initiative power should be broadly construed with all doubts resolved in its favor." 118 Nev. at 760, 59 P.3d at 1187 (citing Associated Home Builders v. City of Livermore, 557 P.2d 473, 480 (Cal. 1976)). This statement in Garvin, however, was not establishing an analytical framework to determine an initiative's threshold validity as the Petitioner's Committee suggests, but rather, was describing the analysis underlying a decision of the California Supreme Court. Id. And to the extent that Garvin may be interpreted to adopt this approach for determining an initiative's threshold validity, Garvin concurrently reaffirmed the rule in Fuji Park and Train Trench —that initiatives concerning specific municipal land do not constitute legislative acts. Therefore, even broadly construing the electorate's initiative power does not alter the analysis. Garvin, 118 Nev. at 765 nn.71-72, 59 P.3d at 1190-91 nn.71-72.

measures subject to the electorate's initiative power, we affirm the district court's judgment.

It is so ORDERED.

s/Rose, C.J.
Rose

s/Becker, J.
Becker

s/Maupin, J.
Maupin

s/Gibbons, J.
Gibbons

s/Douglas, J.
Douglas

s/Hardesty, J.
Hardesty

s/Parraguire, J.
Parraguire

cc: Hon. Kathy A. Hardcastle, District Judge
Travis Chandler
Boulder City Attorney
Clark County District Attorney David J. Roger/Civil Division
Lionel Sawyer & Collins/Las Vegas
Clark County Clerk

Nevada 8th Judicial District Court
Boulder City v. Rattner
Order Granting Declaratory, Injunctive and Extraordinary Relief

Case No. A523265
Filed July 20, 2006

DISTRICT COURT CLARK COUNTY, NEVADA
The City of Boulder City,
Plaintiff
v.
Sherman Rattner; Nancy Nolette; Frank L. Fisher; Linda Robertshaw; Don L. Shettel, Jr.; Dolores Gabay,
Defendants
Case No. A523265

ORDER GRANTING DECLARATORY, INJUNCTIVE AND EXTRAORDINARY RELIEF

ORDER GRANTING DECLARATORY, INJUNCTIVE AND EXTRAORDINARY RELIEF

The City of Boulder City's Motion for Declaratory Order, Injunction and Writ of Mandamus or Prohibition came on for hearing on July 7, 2006 at 9:00 A.M., at which time the Court also heard the Defendants' opposition and counter motion for summary judgment and proposed Intervener Clark County's Motion to Intervene. The Court, having considered the evidence presented in the form of

exhibits and testimony, the arguments of the parties, and good cause otherwise appearing, hereby finds and concludes as follows:

1. The Defendants' right to enact municipal legislation by initiative petition is a fundamental right guaranteed by the United States and Nevada Constitutions; and

2. Notwithstanding the foregoing, the Defendants' right to enact legislation by initiative petition is limited to legislative matters, and does not extend to administrative matters entrusted to the City Council of Boulder City; and

3. The Defendants have submitted initiative petitions (hereby referred to as the "sell" initiatives) to amend the Charter of Boulder City (Exhibits A and B to Plaintiff's Motion) and to enact ordinances (Exhibits C and D to Plaintiff's Motion) which, inter alia, compel the City of Boulder City to sell approximately 107,000 acres referred to as the land transfer area ("Land"), including an 85,000 acre conservation easement, to a yet-to-be-formed trust governed by Defendants for the sum of $1. The initiatives also empower the trust to re-zone the Land, de-annex the Land from Boulder City, execute documents relative to the Land, and sell the Land for the "highest value", with the proceeds of the sale to be paid into the trust to be dispersed by the trust; and

4. The Defendants have submitted initiative petitions to amend the Charter of Boulder City (Exhibit E to

Plaintiff's Motion) and enact ordinances (Exhibit F to Plaintiff's Motion) which, inter alia, compel the City of Boulder City to take specific actions to preserve the Land, to the exclusion of existing, current and previously approved Land uses, leases and other property rights (hereby referred to as the "preserve" initiatives); and

5. Based upon the evidence presented, the "sell" initiatives are administrative in nature, rather than legislative, based upon the test adopted by the Nevada Supreme Court in Garvin v. Ninth Judicial District Court, 59 P.3d 1180 (Nev. 2003) and Forman v. Eagle Thrifty Drug & Market, 516 P.2d 1234 (Nev. 1973); and

6. Based upon the evidence presented, the "preserve" initiatives are also administrative in nature, rather than legislative, based upon the tests adopted by the Nevada Supreme Court in Garvin, supra, and Forman, supra, and

7. Substantial harm will result to the City of Boulder City, the citizens ofBoulder City, and the citizens of Clark County if the "sell" and/or "preserve" initiatives are enacted; and

8. No harm will result to the Defendants, Boulder City, the citizens of Boulder City, and the citizens of Clark County if the "sell" and/or "preserve" initiatives are not enacted; and

9. The City of Boulder City has shown by appropriate

quanta and quality of evidence that the "sell" and/or "preserve" initiatives are administrative in nature, and are thereby an invalid exercise of the initiative process, and Boulder City is therefore entitled to a declaratory order pursuant to NRS 30.040 finding the initiatives invalid; and

10. The City of Boulder Cty lacks a plain, speedy and adequate remedy in the ordinary course of law to address invalid initiative petitions, and is therefore entitled to a writ or injunction against placing the initiatives on the ballot; and

11. The City of Boulder City is not legally required to place invalid initiatives on the ballot of the next general election, and is entitled to a writ and/or injunction preventing such placement on the ballot; and

12. The Defendants' defenses, counterclaims and countermotions lack factual and legal merit; and

13. Clark County is entitled to intervene as a matter of right.

NOW, THEREFORE, based upon the foregoing findings and conclusions, the Court hereby orders, adjudges and decrees that:

1. Pursuant to NRS 30.040, the "sell" initiatives are hereby declared invalid on the basis that they are

administrative, rather than legislative; and

2. Pursuant to NRS 30.040, the "preserve" initiatives are hereby declared invalid on the basis that they are administrative, rather than legislative; and

3. Pursuant to NRS 33.010, NRS 34.170 and NRS 34.320, the City of Boulder City is hereby enjoined and prohibited from placing the "sell" and "preserve" initiatives on the ballot of Boulder City's next general election;

4. The countermotion(s) of the Defendants are hereby denied as being without merit or basis;

5. Clark County's Motion to Intervene as a Plaintiff is granted; and

6. This Order is a final determination and judgment for all pending matters pursuant to NRCP 54.

DATED: this 2Oth day of July 2006.

s/Kathy A. Hardcastle
District Court Judge

Submitted By:

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Citizen Sponsored Initiative Amendment to Preserve the Eldorado Valley

AN AMENDMENT OF THE BOULDER CITY CHARTER TO PRESERVE THE ELDORADO VALLEY EXCLUSIVELY FOR DEVELOPMENT ONLY AS A "DESERT TORTOISE PRESERVE, PUBLIC RECREATION LAND AND AS A POSSIBLE SITE FOR A SOLAR POWER PEAKING STATION"

Boulder City shall strictly adhere to the intent of the July 9, 1995 Eldorado Valley Transfer Agreement and recitals to preserve the entire 107,412.24 acres known as the "Transfer Area" for development only as a "desert tortoise preserve, public recreation land and as a possible site for a solar power peaking station", and not sell, lease or otherwise dispose of any of the land for any other purpose whatsoever in perpetuity.

Citizen Sponsored Initiative Amendment to Sell the Eldorado Valley

AN AMENDMENT OF BOULDER CITY CHARTER TO SELL THE ELDORADO VALLEY FOR THE BENEFIT OF THE RESIDENTS-OF-RECORD AS OF MARCH 31, 2006

SECTION 1: In recognition of the Legislative Declaration found in NRS 271.020 and such other local, state, and federal legislation as may apply for the equal protection of all of the Residents-of-Record as of March 31, 2006 of Boulder City and as a result of the existing and pending large population growth and intense residential, commercial and industrial development in the incorporated and unincorporated areas surrounding Boulder City there is a need to provide for the health, safety, prosperity, security and general welfare of each individual existing inhabitant of Boulder City while ensuing the need for extensive local improvements in an orderly manner within the Eldorado Valley.

SECTION 2: Now, therefore, as provided for in Article XV of the Boulder City Charter and elsewhere in order to sell or dispose of land, distribute money, and protect Boulder City and provide fairly for the needs of current residents while settling any claims that might interfere with the City's future well being, Boulder City for settlement of all claims and value received of one dollar ($1.00), through a non-profit tax-exempt Trust, established and exclusively

and fully empowered for the benefit of the Residents-of-Record as of March 31, 2006, and shall sell or otherwise dispose of all of the 107,412.24 acres known as the "Transfer Area" in the Eldorado Valley by whatever means determined by the Trust as necessary for the highest value and then distribute from the Trust not less then 90% of total proceeds on an equal basis directly to those Residents-of-Record The remaining 10% shall be used from the Trust to pay toward City debts; a permanent fund for other needs of the City; a by-pass and buffer zone; protecting neighboring communities and habitats; local education; and administering the Trust for the benefit of the members of the Trust.

SECTION 3: To maximize benefit to the Trust members, the City and Trust members shall take all actions, including but not limited to the execution of documents, changes in zoning, or de-annexations as needed to sell the Transfer Area at the highest value and implement the purpose of the Trust and the Amendment.

SECTION 4: For the purpose of managing the Trust the sponsors of the Ballot Measure by which this Amendment is approved will serve as Interim Trustees until the next regularly scheduled municipal election at which time not less then 7 Trustees elected for a 4 year term from the among the members of the Trust shall be selected to serve as Trustees.

SECTION 5: This Amendment and the measures contained therein shall be liberally construed as being for the purpose

of selling all or part of the 107,412.24 acres of land referred to as the "Transfer Area" in the Eldorado Valley acquired through the July 9, 1995 "Contract Between The State Of Nevada And The City Of Boulder City For The Sale Of Land In The Eldorado Valley" for the highest value and distribute not less then 90% of the proceeds on an equal basis directly to the Residents-of Record of Boulder City as of March 31,2006.

SECTION 6: In the event any portion of this Amendment and the measures contained therein are deemed to be unenforceable or insufficient to the purpose of the Amendment it will not affect the validity of the rest of the Amendment, which may be amended, modified or otherwise changed as needed to fulfill the purpose of the Amendment as described in Section 5.

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